

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

| | | |
|--------------------------------------|---|-------------------|
| In re: | § | |
| | § | |
| TXCO RESOURCES, INC., <i>et. al.</i> | § | CASE NO. 09-51807 |
| | § | |
| | § | |
| Debtors. | § | CHAPTER 11 |

**OBJECTION BY SABINO CRUZ DBA CRUZ BACKHOE SERVICE TO NOTICE
OF TRANSFER OF CLAIM OTHER THAN FOR SECURITY AND MOTION TO
QUASH TRANSFER OF CLAIM AND REQUEST FOR HEARING
(RELATED TO DOC. 1002)**

Sabino Cruz dba Cruz Backhoe Service (hereinafter "Cruz") hereby objects to the Notice of Transfer of Claim other than for Security filed by Corre Opportunities Fund, L.P. and files this its Motion to Quash Transfer of Claim and Request for Hearing pursuant to 11 U.S.C. § 1111. The grounds for this Objection and Motion are as follows:

Factual Background

1. Cruz is a valid unsecured nonpriority creditor in the TXCO (the "Debtors") bankruptcy. The Debtors owe Cruz \$109,550.00 for backhoe services. Cruz did not file a proof of claim, but the Debtors listed Cruz in Schedule F. Cruz agrees with the amount listed by the Debtors.

2. Corre Opportunities Fund, L.P. ("Corre") approached Cruz sometime prior to December 11, 2009 and solicited a purchase agreement to procure Cruz's claim against the Debtors. Corre, represented by David Tonner ("Tonner"), entered a Claims Purchase Agreement (the "Agreement") with Cruz on December 11, 2009.

3. Under the Agreement, Cruz was to sell all of his rights, title and interest in the \$109,550.00 claim to Corre for ***immediate payment*** of \$32,865.00. Corre agreed to pay Cruz within ten (10) days of signing the Agreement. As of January 4, 2010 Corre had not paid.

4. On January 5, 2010, Cruz faxed a notice of cancellation of the Agreement to Tonner. Cruz attached an affidavit of fact citing Corre's failure to comply with the payment terms of the Agreement as the reason for cancelling. This fax was received by Corre at 1:54 P.M. on January 5, 2010. A copy of the fax including the fax confirmation is attached as Exhibit "A."

5. Unsure whether his cancellation was valid, Cruz faxed the same notice of cancellation of the Agreement with the same attached affidavit of fact to Tonner again at 5:07 P.M. on January 5, 2009. A copy of the fax and attached affidavit is attached as Exhibit "B."

6. Then, at 5:54 P.M. on January 5, 2009, Corre wired \$32,865.00 to Cruz. A copy of the Wire Confirmation is attached as Exhibit "C." The next day, Cruz notified his attorney that he received the wire after notifying Corre of his intent to cancel the Agreement twice. Per his attorney's instructions, Cruz converted the wire funds to a cashiers check and returned the check to Corre. The letter returning the funds to Corre is attached as Exhibit "D."

7. Corre filed its Notice of Transfer of Claim Other than for Security (the "Notice") on January 5, 2010 at 10:05 A.M. The Notice was filed prematurely because the wire consummating the transfer did not go through until 5:54 P.M on the same day.

Relief Requested

8. The Court must quash Corre's Notice because under common law, the Agreement was terminated. Cruz, the offeree, terminated the contract vis-à-vis the two faxes giving notice of cancellation of the Agreement before Corre performed.

9. Additionally, the contract lapsed per its own terms. Under the Agreement, Corre was obligated to pay Cruz "immediately." Corre was obligated to pay Cruz \$32,865.00 within ten days of acceptance of the Agreement. Cruz signed the Agreement on December 11th and Corre did not attempt to pay until twenty-five (25) days later. This delay does not constitute an "immediate" payment.

WHEREFORE, Sabino Cruz dba Cruz Backhoe Service prays that the Court grants his Motion to Quash the Transfer of Claim of Corre Opportunites Fund, L.P. and for further relief as is just and proper.

Dated: January 11, 2010

Respectfully submitted,

LANGLEY & BANACK, INC..

By: 

DAVID S. GRAGG
State Bar No. 08253300
745 E. Mulberry, Suite 900
San Antonio, Texas 78212
210-736-6600 Telephone
210-735-6889 Facsimile

ATTORNEYS FOR SABINO CRUZ dba
CRUZ BACKHOE SERVICE

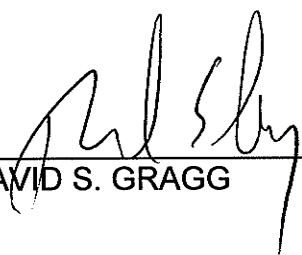
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via ECF and/or by first class regular mail, postage prepaid, on January 11, 2010, on the Service List established in this case.

Deborah D. Williamson
Patrick L. Huffstickler
Lindsey D. Graham
Cox Smith Mathews Incorporated
112 East Pecan Street, Suite 1800
San Antonio, Texas 78205

David Tonner
Archon Bay Capital
PO Box 14610
Surfside Beach, SC 29587

Corre Opportunities Fund, L.P.
Attn: Claims Processing (Bankruptcy)
1370 Avenue of the Americas, 29th Floor
New York, NY 10019



DAVID S. GRAGG

Accounting Solutions

Richard Diaz

**718 East Lake Street
Crystal City, TX 78839
Phone (830) 374-5745**

Fax Cover Page

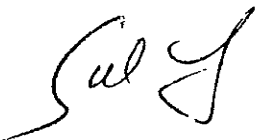
To: David Tonner Fax: (864) 642-0509

Pages (including cover page) 1

**Re: Cancellation of Claim Assignment Agreement
between Sabino Cruz and Archon Bay.**

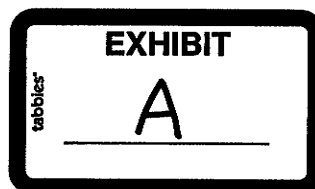
**This is to inform you that we would like to cancel the
agreement of Claim Assignment dated December 11,
2009.**

Should you have any questions please advice.



Sabino Cruz

Cell Phone Number 830/317-2287



HP Officejet 5600 series 5610xi

Personal Printer/Fax/Copier/Scanner

Log for
Accounting Solutions
8303745745
Jan 05 2010 1:54p

Last Transaction

| Date | Time | Type | Identification | Duration | Pages | Result |
|--------|--------|----------|----------------|----------|-------|--------|
| Jan 05 | 01:54p | Fax Sent | 18646420509 | 0:37 | 1 | OK |

**State of Texas
County of Zavala**

Affidavit of Fact

Before me, the undersigned authority, personally appeared Sabino Cruz Jr., PO Box 242, Asherton, TX 78827, after being by me duly sworn, deposed as follows:

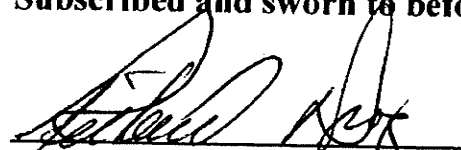
I, the undersigned, hereby depose as follows: Notice of cancellation of agreement of Assignment of Claim is hereby given to Mr. David Tonner, agent for Archon Bay Capital in the bankruptcy case of The Exploration Company dated December 11, 2009 due to failure to comply with payment of claim as per agreement.

End of declaration.



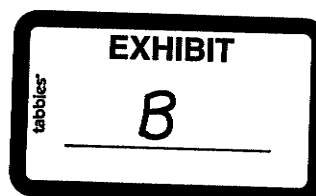
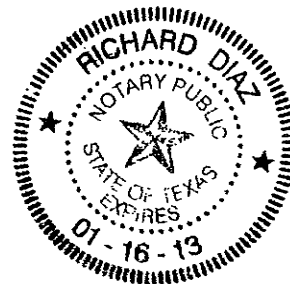
Sabino Cruz Jr

Subscribed and sworn to before me on the 5th day of January 2010.



**Richard Diaz, Notary Public
State of Texas**

My commission expires January 16, 2013



HP Officejet 5600 series 5610xi

Personal Printer/Fax/Copier/Scanner

Log for
Accounting Solutions
8303745745
Jan 05 2010 5:08p

Last Transaction

| Date | Time | Type | Identification | Duration | Pages | Result |
|--------|--------|----------|----------------|----------|-------|--------|
| Jan 05 | 05:07p | Fax Sent | 18646420509 | 1:03 | 1 | OK |

Incoming Messages

Message List

Delivered to FPM: 01/05/2010 17:54:54
IMAD: 20100105 B1Q8021C 027433 01051754
OMAD: 20100105 QMGFNP31 054276 01051754
[See Audit Log for this Message](#)

Test/Prod: Prod

Message was marked as viewed.

Create a return message...

Export

Basic Information

Sender ABA {3100}: 021000089 CITIBANK N.A.
Receiver ABA {3400}: 114924690 CAPITAL BANK OF TE
Amount {2000}: 32,865.00
Type Code {1510}: 1000 - Transfer of Funds
Business Function {3600}: CTR - Customer Transfer
Reference Number {3320}: S060005132BA01

Institution Information

Originator {5000}

ID Code: D - DDA Account Number
Identifier: 7NFG5519
Name: CORRE OPPORTUNITIES FUND LP 1370
Address: AVENUE OF THE AMERICAS 29TH FLR
NEW YORK, NY 10
019

Beneficiary {4200}

ID Code: D - DDA Account Number
Identifier: 3001110212
Name: SABINO CRUZ - DBA CRUZ BACKHOE
Address: SERVICES

Originator Financial Institution {5100}

ID Code: B - SWIFT Bank Identifier Code
Identifier: GOLDUS33XXX

Instructing Financial Institution {5200}

Identifier:
Name: GOLDMAN SACHS EXECUTION AND
Address: CLEARING LP
PO BOX 46 BOWLING GREEN STATION
NEW YORK NY 10283

Create a return message...

Export

EXHIBIT

tabbies

C

709 W Houston
P.O. Box 111
Ash. 10011-1111
Batch 62



LANGLEY & BANACK
INCORPORATED

Attorneys and Counselors at Law

DAVID S. GRAGG
dgragg@langleybanack.com
Direct Dial: (210) 253-7133
BOARD CERTIFIED - BUSINESS BANKRUPTCY LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

January 11, 2010

Mr. David P. Tonner
Corre Opportunities Fund, L.P.
1370 Avenue of the Americas, 29th Floor
New York, NY 10019

VIA UPS OVERNIGHT MAIL
and Telecopy: 864-642-0509

Re: Claim of Sabino Cruz d/b/a Cruz Backhoe against TXCO Resources, Inc.
Case No. 09-50817-RBK

Dear Mr. Tonner:

Please find enclosed a cashier's check for \$32,865.00, representing the wire transfer you sent to my client, Sabino Cruz d/b/a Cruz Backhoe Service, on January 5, 2010, for his claim against TXCO Resources, which was valued at \$109,550.00. Prior to the receipt of your wire transfer, Sabino Cruz twice sent his Notice of Termination of the Claims Purchase Agreement for Corre Opportunities Fund, L.P.'s failure to timely pay in accordance with the contract. The return of the enclosed cashier's check reaffirms my client's position that the Claims Purchase Agreement is not valid and that Sabino Cruz retains any and all right, interest and title to the claim against TXCO.

In addition, Corre Opportunities Fund, L.P. possesses no legal or equitable right to the claim and, therefore, the Notice of Transfer of Claim filed by Corre Opportunities Fund, L.P. is also invalid.

On behalf of Mr. Cruz, we have filed the enclosed Objection to the transfer of the claim to Corre Opportunities Fund, L.P. Please be advised that if we are forced to litigate this matter further, we will be asking the Court to award us attorneys fees and other costs as it is clear that your Corre Opportunities Fund, L.P. has no right to the claim belonging to Mr. Cruz.

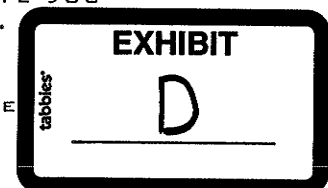
We intend to fully protect my client's rights to the unsecured claim through any legal means necessary.

TRINITY PLAZA II • 745 EAST MULBERRY, STE 900
SAN ANTONIO, TEXAS 78212-3166 • T 210.736.6600 •
WWW.LANGLEYBANACK.COM

SAN ANTONIO • CARRIZO SPRINGS • EAGLE

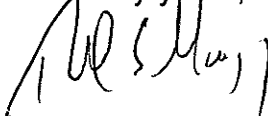
{L & B 12382/0001/L0401774.DOC}

III MERITAS[®] LAW FIRMS WORLDWIDE



Should you have any questions, please feel free to contact me.

Sincerely yours,



David S. Gragg

DSG/kt
Enclosure

cc: Archon Bay
P.O. Box 14610
Surfside Beach, SC 29587

Danny Gonzalez [Firm]
Steven R. Brook [Firm]

M 5592821

**CAPITAL BANK
OF TEXAS**

P.O. Box 1015
Carrizo Springs, TX 78834
(830) 878-5221

THIS DOCUMENT HAS A MICRO-PRINT SIGNATURE LINE, WATERMARK AND A THERMOCHROMIC ICON; ABSENCE OF THESE FEATURES WILL INDICATE A COPY

CASHIERS CHECK

NOTICE TO CUSTOMER: THE PURCHASE OF AN INDEMNITY BOND WILL BE
REQUIRED BEFORE ANY OFFICIAL CHECK OF THIS BANK WILL BE REPLACED OR
REFUNDED IN THE EVENT IT IS LOST, MISPLACED OR STOLEN CASHIERS CHECK

010132

001-cbt fca-101-9

REMITTER

SABINO CRUZ/CRUZ BACKHOE SERVICE

01/07/2010

PAY TO THE
ORDER OF

CORE OPPORTUNITIES FUND LP 130

*****\$32,865.00

*****Thirty-Two Thousand Eight Hundred Sixty-Five and 00/100's*****

AUTHORIZED SIGNATURE

⑈010132⑈ ⑆114924690⑆ ⑈3071001310⑈